

APPEAL NO. 161122

FILED AUGUST 11, 2016

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 4, 2016, and concluded on May 9, 2016, in Austin, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) respondent 1 (claimant) sustained a compensable injury on Date of injury; (2) the claimant had disability from November 18, 2014, through the date of the CCH; and (3) the claimant was the employee of Rivera Drywall, Inc. (RDI) for the purposes of the 1989 Act at the time of the claimed injury on Date of injury). The appellant (carrier) appeals the hearing officer's determinations of compensability, disability, and employee status based on sufficiency of the evidence. The claimant responded, urging affirmance of the disputed determinations. The appeal file does not contain a response from respondent 2 (subclaimant).

DECISION

Reversed and remanded for reconstruction of the record.

Section 410.203(a)(1) requires the Appeals Panel to consider the record at the CCH. The appeal file contains two compact discs (CD) recording the February 4, 2016, setting of the CCH. The first CD is approximately 77 minutes and contains preliminary matters, opening arguments, direct and cross-examination of the claimant and partial direct examination of another witness, Terri Gomez (TG). The second CD is approximately 15 minutes and contains additional direct examination of TG, and partial cross-examination. The hearing was continued until May 9, 2016. The appeal file does not contain a recording or transcript of the May 9, 2016, setting. Consequently, we reverse and remand this case to the hearing officer who presided over the two settings in this CCH, if possible, for reconstruction of the record. See Appeals Panel Decision (APD) 060353, decided April 12, 2006.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers' Compensation, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas

Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD J. GERGASKO
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge